

Amendment No. 2 to HB1130

Hazlewood
Signature of Sponsor

AMEND Senate Bill No. 868*

House Bill No. 1130

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 16, is amended by adding the following as a new chapter:

16-7-101.

There is created and established an appellate court to be designated and styled the court of special appeals of Tennessee.

16-7-102.

(a) The court of special appeals is composed of three (3) judges, one (1) from each grand division of the state.

(b)

(1) Immediately preceding appointment, each judge must be at least thirty (30) years of age, must have been a resident of the state for at least five (5) consecutive years, and must have been a resident of the grand division from which the judge is appointed for at least one (1) year. For purposes of this section, resident has the same meaning as defined in § 2-1-104. The judges must be duly licensed to practice law in this state.

(2) In order to ensure fairness, to avoid the appearance of impropriety, and to avoid political bias, a former member of the general assembly or a former governor shall not serve as a judge of the court of special appeals.

(c) The governor shall appoint three (3) persons to serve as judges of the court of special appeals and vacancies on the court of special appeals must be filled by the

governor. Each judge of the court of special appeals will be elected by the qualified voters of the state in a statewide retention election conducted in accordance with title 17, chapter 4, part 1. A judge of the court of special appeals must qualify as a candidate and be elected by the qualified voters of the state.

(d) The initial terms of the judges begin on October 1, 2021. The oath of office for each judge of the court of special appeals must be filed and entered on the minutes of the court in the grand division from which the judge resides. The oath must likewise be filed and entered on the records in the office of the secretary of state at Nashville.

16-7-103.

(a) The compensation of the judges of the court of special appeals will be the same as that received by the judges of the court of appeals.

(b) The necessary travel expense and per diem allowance incurred by the judges in the performance of their official duties under this part will be paid and reimbursed by the state in the same manner as authorized for the judges of the court of appeals.

(c)

(1) When a judge of the court of special appeals is unable to perform the duties of office on account of absence, sickness, disqualification, or other disability, the judge or the clerk of the court shall advise the chief justice of the supreme court of the inability to serve and when so advised, the chief justice may assign a judge of the supreme court, a judge of the court of appeals, a judge of the court of criminal appeals, a circuit or criminal judge or chancellor, or a retired judge of any of those courts to the court of special appeals to serve such time as the chief justice may direct. If it appears to the chief justice that the absence, sickness, disqualification, or other disability of a judge of the court of special appeals may be protracted, then the chief justice shall certify this fact to the

governor and the governor may commission a person to fill the vacancy during the inability of the judge to serve.

(2) The compensation and expense allowance for the appointed judges must be the same as for regular judges with proper adjustments being made in the compensation of retired judges or judges of trial courts when serving on the court of special appeals so that the maximum received by them will not exceed the pay of the regular judges.

16-7-104.

(a) Except as otherwise provided in subsection (d), the jurisdiction of the court of special appeals is appellate only. Subject to the supreme court's jurisdiction authorized by law, the court of special appeals shall review cases pursuant to this section.

(b)

(1) The court of special appeals, upon a proper motion by an aggrieved party, may review any case challenging the constitutionality of a state statute, an executive order, or an administrative rule that is brought against the state, a state department, a state agency, or any state official acting in their official capacity.

(2) For purposes of subdivision (b)(1), "challenging the constitutionality" means a legal claim brought in a civil cause of action alleging a state statute, executive order, or rule is unconstitutional at all times and under all circumstances or has been applied in an unconstitutional manner.

(c) The court of special appeals may review a proceeding in which the attorney general and reporter intervenes on behalf of the state, pursuant to § 29-14-107(b), and requests the court to certify the appeal of a judgment in the proceeding on the issue of constitutionality. Permission to appeal pursuant to this subsection (c) must be granted by the court of special appeals and the trial court having jurisdiction over the proceeding.

(d) The court of special appeals has original jurisdiction over any case challenging a statute that apportions or redistricts state legislative or congressional districts.

(e)

(1) An appeal, whether an interlocutory appeal, extraordinary appeal, or an appeal as of right, sought on behalf of the state pursuant to subsection (b) may be granted or denied at the discretion of the court of special appeals. There is no requirement that the trial court grant leave or permission to appeal in a case in which review is sought pursuant to subsection (b). Review by the court of special appeals pursuant to subsection (b) or (c) is de novo.

(2) A court from which an issue is certified pursuant to subsection (c) maintains jurisdiction over the remainder of the case and shall enter a stay in proceedings until the court of special appeals or the supreme court has ruled on the issue certified.

(f)

(1) If the court of special appeals finds, upon the proper motion of a party or upon its own motion, that expedited review of a case is needed pursuant to subdivision (f)(2), then the court, in consultation with the supreme court, may expedite its review.

(2) In determining whether expedited review is needed pursuant to subdivision (f)(1), the court of special appeals shall consider the need to ensure the effective and efficient operation of state government, prevent irreparable injury, or timely resolve matters of statewide concern.

16-7-105.

(a) Except as otherwise provided by this section, the court of special appeals shall sit in the supreme court buildings in Knoxville, Nashville, and Jackson, unless a location is otherwise designated by the supreme court, and shall hear, try, and dispose

of any proceeding before the court as a three-judge panel. In the event of a disagreement among the judges, the majority prevails.

(b) The court of special appeals may sit in such other places as the presiding judge may from time to time designate for the purpose of hearing and deciding cases and such other matters as may come before the court for its consideration and determination.

16-7-106.

The judges of the court of special appeals at the first meeting of the court, after appointment and confirmation, shall choose one (1) of the court's judges as presiding judge of the court of special appeals. After selection of the presiding judge at the first meeting of the court, the court of special appeals shall adopt rules governing the terms and elections of subsequent presiding judges of the court.

16-7-107.

The clerks and marshals of the supreme court shall also act and be the clerks and marshals of the court of special appeals. The clerks and marshals shall perform the same duties and functions with respect to the court of special appeals and are subject to the same liabilities as may be prescribed by law. The appeal fees and court costs in the court of special appeals must be the same as authorized by law, and neither the clerks and marshals shall not receive any additional compensation for their services as clerks and marshals of the court of special appeals.

16-7-108.

(a) All cases heard by the court of special appeals must be filed and docketed with the clerk for the grand division within which the case arose. All cases originating in the western grand division must be filed with the clerk of the court at Jackson. All cases from the middle grand division must be filed with the clerk of the court at Nashville. All cases originating in the eastern grand division must be filed with the clerk of the court at Knoxville.

(b) The court of special appeals may transfer any case, appeal record, or any other matter of business coming before the court from one grand division to another grand division for hearing when the respective parties agree to the transfer. Upon application or motion by either of the parties for the case to be transferred to another grand division, the court may issue an order of transfer when it finds the ends of justice require, and the transfer is necessary and proper to safeguard the interest of the respective parties or in the best interest of the public.

16-7-109.

The court of special appeals is a court of record, and the court's judgment shall be executed as provided by the rules applicable to the court. The supreme court may enact rules of procedure for the court of special appeals. If the supreme court does not enact rules of procedure for the court of special appeals pursuant to this section:

(1) When the court of special appeals is exercising its appellate jurisdiction, the Tennessee rules of appellate procedure apply; and

(2) When the court of special appeals is exercising its original jurisdiction, the Tennessee rules of civil procedure apply.

16-7-110.

The court of special appeals, and the individual members of the court, may grant writs of error, certiorari and supersedeas in cases within the jurisdiction of the court, such writs to be returnable to the court of special appeals in the division in which they arose, and the practice in those cases in the court of special appeals will be the same as is prescribed for the supreme court.

16-7-111.

The state shall provide each judge of the court of special appeals a furnished office space in the county of the judge's residence by the state. In the event no office space is available, either from the state or county, then each judge will receive the same monthly allowance from the state as authorized by law for office rental expense.

Likewise, each judge of the court of special appeals will have an assistant and two (2) law clerks, and the salary and travel expense allowance for each will be the same as authorized by law for the secretary and law clerks of each judge of the court of appeals.

16-7-112.

(a) Pursuant to Article II, Sections 4, 5, and 6 of the Constitution of Tennessee, which vest the power of apportionment with the general assembly and due to the need for a timely resolution of any case challenging a statute that apportions or redistricts state legislative or congressional districts, a case challenging such must be filed with the court of special appeals. The court of special appeals or the supreme court shall not impose a substitute plan for a plan enacted by the general assembly apportioning or redistricting state legislative or congressional districts until the court first gives the general assembly a period of time to remedy any defects identified by the court. The period of time given must not be less than fifteen (15) calendar days from the issuance of the court's order, and in setting the period of time, the court shall consider whether the general assembly is currently in session or out of session.

(b) If the general assembly does not enact a new plan within the time set by the court pursuant to subsection (a), then the court of special appeals or supreme court, as applicable, may impose an interim districting plan for use only in the next election cycle, provided the interim districting plan differs from the districting plan enacted by the general assembly only to the extent necessary to remedy any defects identified by the court.

(c) A party in an action challenging a statute that apportions or redistricts state legislative or congressional districts that is dissatisfied with the final judgment of the court of special appeals may appeal to the supreme court, as a matter of right, within ten (10) days from the entry of the judgment of the court. The record on appeal must conform to the requirements of Rule 24 of the Tennessee Rules of Appellate Procedure.

SECTION 2. Tennessee Code Annotated, Sections 8-23-103 and 16-2-101, are amended by deleting the language "and the court of criminal appeals" and substituting instead the language "the court of criminal appeals, and the court of special appeals" wherever it may appear.

SECTION 3. Tennessee Code Annotated, Section 16-4-108 (a)(1), is amended by deleting the subdivision and substituting instead:

The jurisdiction of the court of appeals is appellate only and extends to all civil cases except workers' compensation cases, appeals pursuant to § 37-10-304(g), and appeals lying with the court of special appeals pursuant to § 16-7-104.

SECTION 4. Tennessee Code Annotated, Section 17-4-101(a), is amended by deleting the subsection and substituting instead:

(a) The governor shall appoint a qualified person to the supreme court, the court of appeals, the court of special appeals, or the court of criminal appeals:

(1) For a full eight-year term whenever an incumbent judge of the supreme court, the court of appeals, the court of special appeals, or the court of criminal appeals fails to file with the state election commission a written declaration of candidacy or withdraws a declaration of candidacy within the deadlines established by §17-4-106 or is not retained in a retention election held at the end of an eight-year-term;

(2) To fill a vacancy occurring as a result of death, resignation, retirement, failure to be retained at a retention election held any time other than the end of an eight-year term, or otherwise; or

(3) To fill a vacancy as a result of creation of a new court by the general assembly. The qualified person appointed pursuant to this subdivision (a)(3) will stand for retention election pursuant to this part.

SECTION 5. Tennessee Code Annotated, Sections 17-4-102 and 17-4-105, are amended by deleting the language "or the court of criminal appeals" and substituting instead the language "the court of criminal appeals, or the court of special appeals" wherever it may appear.

SECTION 6. Tennessee Code Annotated, Section 17-4-104, is amended by deleting the language "or court of criminal appeals" and substituting instead the language "court of criminal appeals, or court of special appeals" wherever it may appear.

SECTION 7. Tennessee Code Annotated, Section 17-4-105, is amended by adding the following new subsection:

(f) The judges appointed to the court of special appeals in 2021 will stand for election pursuant to subsection (b).

SECTION 8. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the language "or the court of criminal appeals" and substituting instead the language "the court of criminal appeals, or the court of special appeals" wherever it may appear.

SECTION 9. Tennessee Code Annotated, Section 17-5-201(a)(5), is amended by deleting the language "or court of criminal appeals" and substituting instead the language "court of criminal appeals, or court of special appeals".

SECTION 10. Tennessee Code Annotated, Section 27-1-121(a), is amended by deleting the language "and court of criminal appeals" and substituting instead the language "court of criminal appeals, and court of special appeals".

SECTION 11. A case for which the court of special appeals has jurisdiction that is pending on October 1, 2021, must be conducted pursuant to this act. On or after October 1, 2021, the court of appeals shall not have jurisdiction to determine any issues falling within the jurisdiction of the court of special appeals.

SECTION 12. For purposes of nominating and appointing judges of the court of special appeals, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect October 1, 2021, the public welfare requiring it.